

**REMARKS AND TELEPHONE INTERVIEW SUMMARY**

On October 30, 2008, Applicant's counsel participated in a telephone interview with Examiner Fox. Specifically, Applicant's counsel and the Examiner discussed the rejections under 35 U.S.C. §102(b) in view of U.S. Patent No. 5,183,176 to Meier et al. (the "176 Patent") and 35 U.S.C. §103(a) in view of the '176 Patent combined with U.S. Patent No. 5,028,197 to Krein et al. (the "197 Patent") and U.S. Patent No. 3,951,284 to Fell et al. (the "284 Patent"). Applicant's counsel and the Examiner were unable to reach any agreement during the interview.

Turning to the issues raised in the Office Action, the Examiner rejects the drawings "because newly added limitation (relative heights of liner and opening) are not clearly shown in the drawings." 37 C.F.R. § 1.83 provides that "[t]he drawing in a nonprovisional application must show every feature of the invention specified in the claims." At least Figures 2 and 4 in the application clearly show the relative dimensions of the liner and opening. The Examiner cites no authority supporting his request for amended drawings and the Applicant respectfully contends that no amendment is necessary.

Next, the Examiner rejects claims 22-29 under 35 U.S.C. §112, second paragraph. In particular, the Examiner contends that the limitation "no more than one" in claims 22-24 and 26 is "indefinite." Applicant has amended claims 22-24 and 26 to require a single opening. As for claims 25-29, these claims include the limitation "an access opening along at least one side panel adapted for loading and unloading said cargo, said access opening having a height and width substantially equal to the height and width of an opening of the elongated container adjacent to the access opening." The Examiner argues that "...it is

indefinite as to how large the door to the container may be.” However, this is not the case. Although the container is not an element of this claim, the height and width of the opening can be easily ascertained and understood by one of ordinary skill in the art. “As long as those of ordinary skill in the art realized that the dimensions could be easily obtained, 112, 2d para. requires nothing more.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1USPQ2d 1081 (Fed. Cir. 1986). Accordingly, these claims are definite and the rejections under §112 should be withdrawn.

With regard to the substantive issues, as mentioned in the telephone interview summary above, the Examiner rejects claims 1, 5, 7, 8, 22, and 24-26 under 35 U.S.C. §102 in view of the ‘176 Patent. This patent discloses a lining (1) for an air-freight transportation container. The lining (1) includes a floor (2), side walls (3, 4), top (5), and front and rear walls (6, 7). The front wall (6) has an opening (8) for loading and unloading the liner (1).

In great contrast, Applicant’s independent claims 1, 22, and 25 each require four *elongated* panels to substantially match the elongated sides, top and bottom of the container. These claims also require first and second end panels and an access opening along at least one side panel. Nowhere does the ‘176 Patent disclose *elongated* sides panels (i.e., having more length than width), much less, that the opening is in the elongated side panel. Instead it discloses that the opening is in the “front wall (6)” and never discusses that this is an elongated side panel. Accordingly, since each and every element of claims 1, 22, and 25 is not taught by the ‘176 Patent, it fails to anticipate. *See Lewmar Marine, Inc. v. Bariant, Inc.*, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987) (finding that “[a]nticipation under 35 U.S.C. §102

requires the presence in a single prior art disclosure of each and every element of a claimed invention”).

With specific reference to claim 25, this claim requires, “an access opening along at least one side panel adapted for loading and unloading said cargo, said access opening having a height and width substantially equal to the height and width of an opening of the elongated container adjacent to the access opening.” The ‘176 Patent fails to disclose that the opening has a height and width substantially equal to the height and width of the opening of the elongated container. Instead, the ‘176 Patent never discusses the opening of the container or the dimensions of the opening. Since the liner of the ‘176 Patent is for “thermal insulation,” the possibility exists that the opening of the liner is smaller than the opening of the container to minimize thermal losses and increase the insulating efficiency of the liner.

In view of the foregoing, the rejections under §102 must be withdrawn. By their dependence, either directly or indirectly, claims 5, 6, 8, 24, and 26 are also not anticipated.

Next, the Examiner rejects claims 2-4, 12, 23, and 29 under 35 U.S.C. §103(a) in view of the ‘176 Patent combined with the ‘197 Patent. The ‘197 Patent discloses a liner 16 having an opening 18 in an end of the liner 16. Nowhere does the ‘197 Patent disclose an open tube attached to the opening to form a passage for loading and unloading cargo, as required by Applicant’s claims 2-4, 23, and 29. Instead, the ‘197 Patent shows a single opening 18 in the end of the liner 16 with absolutely no structure attached to the opening 18 that could be construed as a tube that forms a passage for loading and unloading cargo.

In order to establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. *KSR Intl. Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). If examination does not produce a *prima facie* case of obviousness, then without more, the claims must be allowed and the patent granted. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Since no combination of the '176 and '197 Patents teach or suggest all of the limitations of claims 2-4, 23, and 29, these claims must be allowed. With regard to claim 12, this claim requires “[t]he liner of Claim 1 in combination with a source of air for erecting the liner.” Since neither the '176 nor the '197 Patent teach or suggest the liner of claim 1, this claim should also be allowed.

Finally, the Examiner rejects claims 6, 21, 27, and 28 under 35 U.S.C. §103(a) in view of the '176 Patent combined with the '284 Patent. All of these claims require a second access opening in the liner. The Examiner contends that “[i]t would be obvious to one of ordinary skill in the art . . . to provide the liner taught by Meir et al. [the '176 Patent] with openings at each door to the container as taught by Fell et al. [the '284 Patent] in order to allow each door to the container to be utilized thereby increasing the speed of loading and unloading the container.” The '284 Patent discloses a liner having at least two apertures in an upper portion of an end panel for loading and at least one aperture in a lower portion of the end panel for unloading. However, the '176 Patent states that the liner has an opening “solely on one side.” *Col. 1, l. 65* (emphasis added). The impetus of the '176 Patent is to create a liner for thermal insulation of its contents. Including an opening “solely on one side” likely serves to minimize the thermal losses in the liner. Providing an additional

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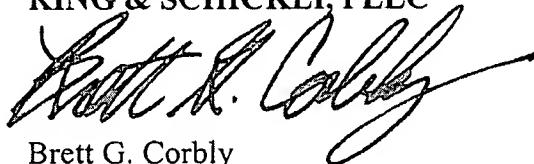
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opening would negatively impact the desired insulating properties of the liner in the '176 Patent. Accordingly, a person of ordinary skill in the art would not modify the liner to include more than one opening. Moreover, since the '176 Patent expressly "teaches away" from a liner having more than one opening and the '284 Patent requires a liner with multiple openings, it is improper to combine these references. *In re Grasselli*, 713 F.2d 731, 218 USPQ 769 (Fed. Cir. 1983) (finding that it is improper to combine references that teach away from their combination). Accordingly, claims 6, 21, 27, and 28 are not obvious and should be allowed.

In view of the foregoing, Applicant respectfully requests a Notice of Allowance for claims 1-8, 12, and 21-29. The undersigned authorizes the deduction of any necessary fees, including three months of extension fees, from Deposit Account 11-0978.

Respectfully submitted,

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